

EXHIBIT 10

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CITIZENS FOR CONSUME, et al. CIVIL ACTION NO. 01-12257-PBS
Plaintiffs .
 .
V. . BOSTON, MASSACHUSETTS
 . JULY 20, 2007
ABBOTT LABORATORIES, et al .
Defendants .

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

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I N D E X

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P R O C E E D I N G S

2 (Court called into session)

3 THE CLERK: The Honorable Marianne B. Bowler
4 presiding. Today is July 20, 2007. The case of Citizens For
5 Consume et al. v. Abbott Laboratories et al., Civil Action No.
6 01-12257 will now be heard. Would counsel please identify
7 themselves for the record.

8 MR. NEIL: John Neil on behalf of the United States.

9 MR. GOBENA: Gejaa Gobena on behalf of the United
10 States.

11 MR. DRAYCOTT: Justin Draycott on behalf of the
12 United States.

13 THE COURT: Thank you.

14 MR. DALY: Good morning, Your Honor, Jim Daly on
15 behalf of Abbott Laboratories.

16 THE COURT: Thank you.

17 MR. ANDERSON: Good morning, Your Honor, Jared
18 Anderson counsel for the Relator.

19 MR. WINTER: Good morning, Your Honor. I'm Raymond
20 Winter, counsel for the state of Texas.

21 THE COURT: All right, thank you very much. Well
22 we're start with these and take them in the order in which they
23 were filed. So the first is Docket Entry No. 3959 which is
24 Abbott's renewed motion to compel. Mr. Daly?

25 | MR. DALY: Your Honor, is this the one on the

1 privileged information that they will not disclose. We agree
2 with that position. What we disagree with strenuously is that
3 somehow that these arguments only cut in one direction, that
4 the same type of information when it's being held by Abbott is
5 absolutely privileged and we agree it is privileged and it's
6 also irrelevant. It's not, you know, who the government in its
7 judgment within another branch of government or anywhere else
8 elected to consult about a complaint is not the evidence in
9 this case. And again, I want to make clear that we're not
10 objecting to this because Abbott won't turn it over. I think
11 Your Honor should be very skeptical on argument that this is
12 somehow non-privileged information they're entitled to when
13 precisely the same category of information they're asserting a
14 privilege, won't turn it over and have said, you know, you
15 don't get it.

16 THE COURT: All right, denied at this time. Anything
17 else, Mr. Daly?

18 MR. DALY: Yes, Your Honor. The third - that was all
19 the investigatory information. The final category is we've
20 asked for the government to produce to us their evidence of
21 false claims and false statements, kind of a basic aspect of
22 the case. They've sued us under the False Claims Act. We've
23 asked for them to identify the false statements we made, the
24 alleged misrepresentations. What were they? When were they?
25 What was wrong with them and what they should have been?

1 That's on the false statement side. On the false claims side
2 under the False Claims Act, we've said, give us the false
3 claims and we've even offered for them to do representative
4 samples of both. In other words for each year, for each NDC,
5 give us the misrepresentations or the representations, give us
6 the alleged false claims and we'll start there because it is a
7 large job.

8 One of the problems is that with Medicare for example
9 I think the Court's heard mention that there are, you know,
10 twenty some carriers that actually processed the claims for
11 Medicare, they all have different AWP's that they use so the
12 same drug Abbott's Vanco, for example, for one carrier might be
13 reimbursed at \$3 and for another carrier it's \$15. Well, you
14 know what, the fraud claim that they make is going to be
15 different for each one of those. So we've asked them to come
16 forward on that. On the Medicaid side as the Court is aware,
17 the state has a slightly different and sometimes dramatically
18 different way to reimburse these drugs. Some of them do a lot
19 of AWP's, some of them do it on other reporting prices. Some
20 of them put max or FUL's, maximum allowable costs or federal
21 upper limit type numbers on them and so the government has sued
22 us for all of the reimbursements by the states under Medicaid,
23 and we think it's only fair that they have to come forward and
24 show us what's false and show us what it should have been. And
25 giving us, which they're in the process of doing, claims

1 information, doesn't cut it because all claims information is
2 going to say that on such and such a date the state of
3 Connecticut paid \$25 for a vial of Vanco and it's going to be,
4 you know, embedded in data. That's not going to tell us what's
5 false, what it should have been or anything like that. So
6 that's why we've offered at least preliminarily for them to do
7 a representative sample of these items NDC by NDC, year by
8 year.

9 THE COURT: Why not?

10 MR. DRAYCOTT: Absolutely they're entitled to the
11 claim data as I think Mr. Daly just indicated. We are
12 endeavoring to produce it. It is a time consuming process
13 because of the manner in which this data is maintained. It's
14 an antiquated system. We can't simply download the claims data
15 to a hard drive. We have to - and we are now in consultation,
16 that is the technical components of the two offices with Abbott
17 trying to figure out the format in which the claims data can be
18 produced. And there's two--

19 THE COURT: All right, so you're going to get the
20 claims data.

21 MR. DRAYCOTT: Well, just to be--

22 MR. DALY: Right. They're working on it, correct.

23 MR. DRAYCOTT: --fair to Mr. Daly, I think there's
24 two components of what he's talking about in terms of the
25 damage analysis. The other part of it of course is what the,

1 it reflects the amounts that were paid and the claims that
2 were paid with respect to the subject drugs at issue. The
3 other component is of course what should have been paid by the
4 just as Abbott has requested data information from the
5 government. We in the same way have asked for sales and
6 transaction data from Abbott. That is only now beginning to be
7 forthcoming and there is a back and forth between other folks
8 in my office and Abbott trying to, you know, they appear to
9 have produced some electronic media with transactional data on
10 it. We're now trying to figure out how to open it, how to read
11 it, figuring out what kind of format it's in. Until all that
12 is done and we can figure out what the transactional prices
13 were which is then going to indicate the range of which the AWP
14 actually should have been reported, you know, that is just a
15 time consuming process and it requires information from Abbott
16 in order for us to then be able to come up with a damage
17 calculation which will then of course will be expressed in an
18 expert report and is going to be I think the subject of a
19 future round of discovery when it comes down to the expert
20 phase of this litigation, at least the expert phase of the
21 discovery process. And it's just too earlier for the
22 government to, since we have not even been able to open yet the
23 Abbott transactional data that we certainly can't provide that
24 information yet.

25 MR. DALY: Just as I said, they are giving us the

1 claims data. My point about that is that our requests aren't
2 about the claims data. Our request is about what's false.
3 What's the false statement? What's the false claim? And we
4 believe, and as I tried to explain, the data isn't going to
5 answer that. The data is just going to give us a transaction
6 price of 20 or 30 or 10 or 15 or \$20, whatever it might be.

7 THE COURT: Well can you tell them how in what format
8 you want this into?

9 MR. DALY: We have, Your Honor, in a letter. It's
10 Exhibit 8 to our brief. We've asked them to give us by NDC by
11 year for Medicaid, I'm sorry, Medicare, a statement of, you
12 know, what's false, what's the false statement? What are you
13 saying we misrepresented?

14 THE COURT: All right, why not?

15 MR. DRAYCOTT: Well we've indicated - we've indicated
16 that it is the statement, the AWP statement through the
17 compendia which again is this is a, in order to answer this
18 question you have to understand the context in which these
19 claims are made which is that the AWP is not a--

20 THE COURT: Trust me counsel, I understand.

21 MR. DRAYCOTT: --is not, if I've been presumptuous I
22 apologize, Your Honor. But the reported price actually doesn't
23 go to the government. It goes to the private compendia. And
24 that is a transaction which the government is not a direct
25 party and certainly that is an area of discovery that we're

1 taking against Abbott to get those statements. But that's
2 going to be the core statement. With respect to the claim then
3 that, the claim which is rendered false by that statement of an
4 inflated AWP is the one that's paid for the beneficiary and
5 that's the claims data we're trying to produce and we are in
6 the process of producing. And I think the other part of this
7 is, is again the falsity is--

8 THE COURT: All right, I'm going to wait until
9 everything's produced. Denied without prejudice. You can
10 renew it after you get a look at everything.

11 MR. DALY: I understand, Your Honor. Judge, that's
12 all that there is on that motion.

13 THE COURT: All right. So the final motion is the
14 motion for a protective order.

15 MR. DALY: Yes, Your Honor.

16 THE COURT: 4135.

17 MR. DALY: And that I believe is ours as well, Judge.

18 THE COURT: Yep.

19 MR. DALY: This is the argument concerning the
20 government's notice for a deposition of Myles White--

21 THE COURT: Right.

22 MR. DALY: --who is the chief executive officer and
23 the chairman of the board of my client, Abbott Laboratories.

24 As the CEO and chairman, Mr. White is protected from potential
25 harassment and abuse by the law that the Court's seen in the